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ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 12-6-07

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
RICHARD MASSIE, :
: Plaintiff, :
: :
: -v- : Defendant.
: :
-----x

06 Civ. 12905 (JSR)

ORDER

METROPOLITAN MUSEUM OF ART,

JED S. RAKOFF, U.S.D.J.

On September 17, 2007, the Honorable Michael H. Dolinger, United States Magistrate Judge, issued a Report and Recommendation ("Report") in the above-captioned matter recommending that the pro se plaintiff's complaint of employment discrimination be dismissed except as to his claim of retaliation relating to events that occurred on April 5, 2006. Both sides timely filed objections. Accordingly, the Court has reviewed the motion and the underlying record de novo.

Having done so, the Court finds itself in agreement with Judge Dolinger's Report. Plaintiff's objections, though lengthy, largely address the underlying merits, whereas the ground of Judge Dolinger's dismissal was timeliness. Defendant's objection is that the timeliness bar should also apply to the claim relating to April 5, 2006, since the federal Equal Employment Opportunity Commission ("EEOC") issued its right to sue letter on July 24, 2006 but the Complaint in this case was not filed until November 3, 2006, i.e., twelve days beyond the 90-day period allowed for such filings. See 42 U.S.C. § 2000e-5(f)(1). However, as Judge Dolinger found,

plaintiff submitted his complaint to the Pro Se Clerk of this Court on October 13, 2006, see Report at 10, i.e., within the 90-day period. Any delay thereafter was the fault of the Pro Se Clerk's Office and warrants equitable tolling. See Toliver v. County of Sullivan, 841 F.2d 41 (2d Cir. 1988); Celestine v. Cold Crest Care Ctr., 495 F. Supp. 2d 428, 433 (S.D.N.Y. 2007); Nielsen v. Flower Hosp., 639 F. Supp. 738, 740 & n.3 (S.D.N.Y. 1986) (collecting and discussing cases).

Accordingly, plaintiff's claims are dismissed with prejudice except for the claim of retaliation relating to the events of April 5, 2006. The case is remanded to Judge Dolinger for all further proceedings relating to the remaining claim, including preparation for trial. The Clerk of the Court is directed to close document number 7 on the Court's docket.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
December 5, 2007